



SO ORDERED.

SIGNED this 17 day of June, 2005.

Dale L. Somers

Dale L. Somers
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

**WILLIAM J. DAVIS and
MARILYN K. DAVIS,**

DEBTORS.

**CASE NO. 04-14554
CHAPTER 13**

**MEMORANDUM AND ORDER DENYING
H&R BLOCK'S MOTION FOR RELIEF FROM STAY**

The matter before the Court is H & R Block's Motion for Relief from Automatic Stay. H & R Block (Block) appears by Brian Devling and Marcus A. Helt, Husch & Eppenberger, LLC. The Debtors, William J. Davis and Marilyn Kay Davis, appear by Mark J. Lazzo, Mark J. Lazzo, PA.

There are no other appearances.

Block contends that it should be granted relief from stay for cause to proceed against the Debtors in Sedgewick County District Court on litigation filed prepetition to enforce a covenant not to compete and related terms of employment contracts. The Debtors oppose Block's motion. The Court has considered the motion, the Debtors' objection, and the briefs of the parties. Oral argument was held. The Court is ready to rule.¹ As explained below, the Court finds that cause for relief from stay has not been established and therefore denies the motion.

FACTUAL BACKGROUND.

Debtor William Davis was employed by Block as a tax preparer for more than eight years, until his termination in 2001. For tax years 2000 and before, his employment, pursuant to annual contracts, was only for the tax season of approximately four months. On December 1, 2000, Debtor William Davis executed a Premium Tax Return Preparer's Employment Agreement for the period December 1, 2000 until November 30, 2001. Both the 2000 and 2001 employment agreements included confidentiality and noncompete agreements extending for two years subsequent to the termination of employment. In addition to his employment with Block, Debtor William Davis also was a financial advisor and/or broker for American Express.

In late 2000 and early 2001, Block began promoting new financial investment services to its

¹ A motion for relief from stay is a core proceeding. 28 U.S.C.A. § 157(b)(2)(G). This Court has jurisdiction pursuant to 28 U.S.C.A. § 157(a) and §§ 1334(a) and (b) and the Standing Order of the United States District Court for the District of Kansas that exercised authority conferred by § 157(a) to refer to the District's Bankruptcy judges all matters under the Bankruptcy Code and all proceedings arising under the Code or arising in or related to a case under the Code, effective July 10, 1984. There is no objection to venue or jurisdiction over the parties.

clients and determined that William Davis' continued association with American Express constituted a conflict of interest with Block. In October 2001, Block terminated Debtor William Davis's employment for violation of the 2000 and 2001 employment agreements. A year later, on October 31, 2002, Block filed suit against Debtor William Davis in Sedgwick County District Court, case no. 02C3646 (the "Litigation") alleging breach of the noncompete and confidentiality provisions of the contracts. On October 31, 2002, the Sedgwick County Court entered an order granting a temporary restraining order and temporary injunction enjoining debtor William Davis for a period of two years from the date of the order from soliciting, diverting, or taking away any past or present clients of Block and from using, divulging, disclosing, or misappropriating Block's confidential business information and/or trade secrets. On January 21, 2003, an order granting temporary injunction was entered; it extended the temporary restraining order for the period of two years from October 31, 2002. The order found that Davis admitted to preparing tax returns for 11 former Block clients in the 2002 tax season after his termination from Block and that an exhibit indicated the possibility that tax returns were prepared for as many as 15 additional Block clients.

On April 14, 2003, the state court petition was amended to include claims against William J. Davis's wife, Debtor Marilyn Davis, alleging that she founded a tax preparation service on behalf of her husband in order for him to conceal his efforts in soliciting, diverting or otherwise taking away Block's clients during the 2002 and 2003 tax seasons in a violation of the employment agreements. The amended petition includes the following counts: Injunctive relief for violation of the 2000 and 2001 agreements against William Davis; breach of contract against William Davis for violation of the 2000 and 2001 agreements; misappropriation of trade secrets against William Davis; tortious interference

with the business relationship against Marilyn Davis; and civil conspiracy to promote violation of Debtor William Davis' obligations to Block against defendants William and Marilyn Davis. Injunctive relief and compensatory damages are sought. Counsel for Block advised this Court that the damages claimed are a minimum of \$191,000.

Discovery disputes erupted. On October 7, 2003, Block filed a motion to compel and for sanctions against Marilyn Kay Davis. On February 11, 2004, Block's memorandum in support of its motion for sanctions was supplemented. As a remedy for discovery violations, Block requested judgment by default, apparently against both Debtors, and expenses, including attorney's fees.

On August 17, 2004, Debtors filed a voluntary petition under Chapter 7 having, at least in part, the motivation of obtaining a stay of the burdensome Litigation. Block filed for relief from the automatic stay pursuant to 11 U.S.C.A. § 362(d)(1)² on October 8, 2004. On October 15, 2004, Block filed a complaint objecting to the discharge of Debtors' obligations to Block pursuant to subsections 523(a)(4) and (a)(6). The complaint alleges that Block's right to injunctive relief cannot be discharged pursuant to section 727; that Debtor William Davis intentionally and deliberately converted and misappropriated Block's property and intentionally and deliberately solicited Block's clients in violation of his agreements with Block; and that Debtor Marilyn Davis conspired with the Debtor William Davis to willfully and maliciously injure Block and Block's property. Debtors moved to convert their Chapter 7 proceeding to Chapter 13, and the order converting the case was entered on December 7, 2004. On December 29, 2004, Block filed a motion to dismiss the case. Block has objected to the Debtor's

² Subsequent references to the Bankruptcy Code in the text shall be to the Code section only.

proposed chapter 13 plan. After the filing of Debtors' objection to the motion to dismiss, the motion was withdrawn on January 13, 2005, preceding the oral arguments on the motion to dismiss and the motion for relief from stay.

POSITIONS OF THE PARTIES.

Block's motion for relief alleges cause within the meaning of section 362(d) for this Court to lift the stay to allow Block to proceed with the Litigation in state court. Block requests stay relief to allow the district court to liquidate damages for violation of the noncompete clause, discovery abuse, tortious interference with contract, and trade secret violations. In addition, Block wishes to present to the state court an argument that the temporary injunction, which expired by its own terms on October 31, 2004, was violated while in place and therefore should be extended.

Debtors respond that the Bankruptcy Court should determine the amount of the claim of Block against the Debtors and that cause to grant relief from stay is not present. As to the injunction, Debtors state through their counsel that they are now living in Oklahoma, where they are retired and not engaged in tax preparation. The Debtors also argue that the Litigation is a "disproportionate effort by Block to send a message to other Block tax preparers of the ramifications for violating a non-compete agreement." Debtors assert that the actual fees which Block alleges it was deprived of as a result of the Debtors' actions are less than \$3000. Debtors state that their inability to fund their defense to the Blocks' claims over the two years when the Litigation has been pending forced them to seek the protection of the Bankruptcy Court.

ANALYSIS AND CONCLUSIONS OF LAW.

When the Debtors filed for bankruptcy relief on August 17, 2004, the Litigation pending in

Sedgwick County District Court was automatically stayed pursuant to subsection 362(a)(1). “The purpose of the automatic stay provided by 11 U.S.C. § 362 is to protect the debtor and his creditors by allowing the debtor to organize his affairs, and by ensuring that the bankruptcy procedure may operate to provide an orderly resolution of all claims.”³ “The stay enables the debtor to avoid the multiplicity of claims against the estate arising in different forums.”⁴

Block seeks relief from stay pursuant to subsection 362(d)(1), which provides:

- (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay –
 - (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

This subsection “allows the granting of relief from the automatic stay under appropriate circumstances,” with the decision whether to lift the stay left to the discretion of the Bankruptcy Court.⁵

Cause within the meaning of subsection 362(d)(1), apart from the circumstance of lack of adequate protection, is not defined by the Bankruptcy Code. This Court has not found a controlling definition. The legislative history accompanying the enactment of the Code discussed several situations in which it might be appropriate to lift the automatic stay to permit litigation in a different forum:

The lack of adequate protection of an interest in property of the party requesting relief from the stay is one cause for relief, but it is not the only cause. As noted above, a desire to permit an action to proceed to completion in another tribunal may provide another cause. Other

³ *Pursifull v. Eakin*, 814 F.2d 1501,1504 (10th Cir. 1987).

⁴ *In re Curtis*, 40 B.R. 795, 798 (Bankr. D. Utah 1984).

⁵ *Pursifill v. Eakin*, 814 F. 2d at 1504.

causes might include the lack of any connection with or interference with the pending bankruptcy case. For example, a divorce or child custody proceeding involving the debtor may bear no relation to the bankruptcy case. In that case, it should not be stayed. A probate proceeding in which the debtor is the executor or administrator of another's estate usually will not be related to the bankruptcy case, and should not be stayed. Generally, proceedings in which the debtor is a fiduciary, or involving postpetition activities of the debtor, need not be stayed because they bear no relationship to the purpose of the automatic stay, which is debtor protection from his creditors. The facts of each request will determine whether relief is appropriate under the circumstances.⁶

Based upon the foregoing legislative history and a review of case law, the Bankruptcy Court for the District of Utah identified 12 factors for consideration when ruling upon a motion to modify the stay to permit litigation against the debtor to proceed in another forum.⁷ These were summarized by the Second Circuit as including the following:

(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) what impact the stay has on the parties and

⁶ H. Rep. No. 95-595, 95th Cong., 1st Sess. 343-44 (1977).

⁷ *In re Curtis*, 48 B.R. at 799-800.

the balance of harms.⁸

When considering the factors, courts are to be mindful that the “process of determining the allowance of claims is of basic importance to the administration of the bankruptcy estate.”⁹ Other courts have adopted a shorter three-part test:

The test developed by courts to determine if it is appropriate to lift the automatic stay and allow the continuation of [a] lawsuit pending in state court is whether: a) Any ‘great prejudice’ to either the bankrupt estate or the debtor will result from continuation of a civil suit, b) the hardship to the [non-debtor party] by maintenance of the stay considerably outweighs the hardship to the debtor, and c) the creditor has a probability of prevailing on the merits of his case.¹⁰

This Court will consider both formulations of cause.

The burden of proof in stay litigation is governed by section 362(g), which provides:

- (g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section –
- (1) the party requesting such relief has the burden of proof on the issue of the debtor’s equity in property; and
 - (2) the party opposing such relief has the burden of proof on all other issues.

When applying this standard, courts hold that the person who seeks relief from the automatic stay must initially establish cause for relief from stay.¹¹ The burden then shifts to the debtor to rebut the showing

⁸ *In re Sonmax Industries, Inc.*, 907 F.2d 1280, 1286 (2d Cir. 1990).

⁹ *In re Curtis*, 40 B.R. at 800.

¹⁰ *In re Caves*, 309 B.R. 76, 80 (Bankr. M.D. Ga. 2004), quoting *In re South Oakes Furniture, Inc.*, 167 B.R. 307, 309 (Bankr. M.D. Ga. 1994); see also *In re Udell*, 18 F.3d 403, 410 (7th Cir. 1994).

¹¹ *In re Curtis*, 40 B.R. at 802; *In re Caves*, 309 B.R. at 79.

made by the movant, by consideration of the foregoing factors.¹²

This Court initially finds that Block has established cause. The Litigation has been pending in state court since October, 2002. Discovery has been undertaken. A temporary injunction was entered in January, 2003. The Debtors filed for bankruptcy relief shortly before a scheduled hearing on Block's motion to impose the sanction of default judgment for noncompliance with discovery. The Court will therefore examine the factors identified above to determine if the Debtors have rebutted Block's showing.

First, the Court will consider the multiple factors identified by the Utah Bankruptcy Court. As to the first factor, allowing the Litigation to proceed in state court would not resolve all of the issues. Block has already filed a dischargeability complaint, and state court judgments are not res judicata in a subsequent dischargeability action in the Bankruptcy Court.¹³ Granting of relief from stay may not resolve all the bankruptcy issues relating Block's claim against the Debtors.¹⁴ Second, the state court litigation is intimately connected with the bankruptcy case. Determination of the amount of the claim held by Block against the Debtors is a fundamental bankruptcy issue. Third, Debtors are not fiduciaries. Fourth, the state court is not better situated to determine the issues, as they are settled issues of state law which can be determined by this Court. Factors 5, 6, 7, 8, and 9 are not present in

¹² *In re Curtis*, 40 B.R. at 803; *In re Caves*, 309 B.R. at 79.

¹³ *In re Curtis*, 40 B.R. at 803.

¹⁴ The Court is mindful that the more extensive discharge available upon completion of a Chapter 13 plan would render Block's pending motion under subsections 523(a)(4) and (a)(6) moot. However, this case is in its early stages, and the possibility of conversion to Chapter 7 cannot be ruled out.

this case, as no insurer is involved, the Litigation does not involve third parties, no prejudice to other creditors would arise from the Litigation proceeding in state court, and there are no issues of equitable subordination or a judgment lien. The 10th factor, the progress of the state court action, does weigh somewhat in Block's favor, but the Court knows of no reason why the discovery already conducted in the Litigation can not be utilized in the bankruptcy proceedings. Finally, denial of the stay will promote judicial economy and the expeditious determination of issues. Block has been litigating using a "scorched earth" approach¹⁵ which can be controlled through the bankruptcy process.¹⁶

Further, the Court finds that the Debtors would suffer prejudice if the stay were to be lifted. The burden of the state court Litigation has been substantial, and there is no reason to suppose that if relief were granted Block would change its tactics to reduce its impact upon the Debtors. The Debtors are in a chapter 13 bankruptcy and will be required to devote to their disposable income to the funding of their plan, leaving only very limited resources to defend the Litigation. On the other hand, the hardship imposed upon Block if it is required to litigate in the Bankruptcy Court has not been shown to be a substantial. Block requested a jury trial in the Litigation and correctly recognizes that upon filing of its proof of claim in the Bankruptcy Court it will not have a right to have a jury determine the amount of that claim. Block has provided no authority supporting the proposition cause exists for relief from stay

¹⁵ Block's proof of claim, filed after this matter was under advisement, includes fees, costs, and expenses of \$91,051.18, as part of a total claim of \$190,287.96.

¹⁶ Although Block's counsel argued that the Litigation will be resolved by a single District Court Judge rather than under the revolving assignment procedure generally used in Sedgwick County, the materials submitted to this Court do not support that conclusion. The affidavit of Kasey A. Rogg establishes that one District Court Judge granted one request to specially set a matter in his court which would otherwise have been referred to a different judge in Sedgwick County. No motion to permanently assign the Litigation to a single judge has been filed.

solely because of the potential for loss of the right to a jury trial to determine the amount of a claim against a debtor, and the Court's own research has not located such authority.

The Court, for the foregoing reasons holds that the Debtors have rebutted Block's initial showing of cause. The prejudice to the Debtors if relief from stay is granted would be substantial, with only limited benefit to Block. Moreover, the bankruptcy process will be expedited by not granting stay relief.

Block in its arguments to this Court does not attempt to directly refute the foregoing analysis. Rather, Block relies primarily upon the argument that cause exists for relief from stay because, according to Block, the conditions for abstention pursuant to 28 U.S.C.A. § 1334(c) are present. That subsection provides:

(c)(1) Nothing in this section prevents a district court in the interests of justice, or in the interests of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.¹⁷

The Court holds that Block's reliance upon abstention is misplaced. When Block filed its motion for relief on October 8, 2004, when oral argument was held in January 2005, and when briefing on the motion was concluded in February 2005, any discussion of abstention was premature because

¹⁷ 28 U.S.C.A. §§ 1334(c)(1) and (2).

Block's proof of claim was not filed until April 5, 2005, after this matter was under advisement. The Court will therefore first address the abstention argument as it existed when this matter was taken under advisement and then address abstention based upon the record at the time of this order.

Abstention is defined as the “legal principal underlying . . . a relinquishment of jurisdiction.”¹⁸ In other words, abstention by the Bankruptcy Court requires the pendency of a controversy before the Bankruptcy Court over which it has arguably has jurisdiction so that it can abstain from exercise of that jurisdiction. Here, Block sought relief from stay to litigate issues which were not pending before the Bankruptcy Court. Block had not filed a proof of claim or instituted a proceeding in Bankruptcy Court seeking to determine its damages or its right to injunctive relief. Second, Block had not filed a motion for abstention as required by Bankruptcy Rule 5011(b).

In response to the Court’s question at oral argument whether a proceeding exists from which this Court could abstain, Block in its post hearing brief responded “yes,” arguing that two proceedings existed: (1) A dispute regarding the liquidation of a claim; and (2) a dispute regarding which court should liquidate the claim. Block cited various cases¹⁹ for the proposition that “anything that occurs within a case is a proceeding” for purposes of abstention. This may be true; but, if so, it does not support Block’s case, as there was *nothing* pending in the Bankruptcy Court which would require the Bankruptcy Court to determine the amount of Block’s claim or its entitlement to an extension of the injunction previously entered by the state court. As to Block’s first contention, no proof of claim had been filed. As to Block’s second contention, the dispute over whether the state court or the

¹⁸ Black’s Law Dictionary 8 (7th ed. 1999).

¹⁹ *E.g., In re Wolverine Radio Co.*, 930 F.2d 1132, 1141 n.14 (6th Cir. 1991).

Bankruptcy Court should determine the amount of Block's claim against the Debtors was before this Court only because of the motion for relief from stay. It would be circular and illogical to find that abstention from ruling upon the motion for relief constitutes cause to grant the motion for relief. No basis for abstention existed when this matter was taken under advisement; therefore there was no possibility of abstention which could influence the presence of absence of cause for relief from stay.

The Court further declines to find cause for relief because this case is now in the procedural posture where abstention is allowed. Although Block's filing of its proof of claim on April 5, 2005, makes a portion of the foregoing analysis irrelevant, it does not cause the Court to reach a different conclusion.

The conditions for mandatory abstention under 28 U.S.C.A. § 1334(c)(2) are not present. Block is requesting relief from stay to allow the Kansas state court to determine the amount of Block's claim against the Debtors in the pending Litigation. It also filed a proof of claim in this Court to establish an allowed claim against the Debtors based upon the same allegations. Determination of the amount of claim is a core proceeding²⁰ and is a matter "arising in" a title 11 case.²¹ Mandatory abstention, pursuant to 28 U.S.C.A. § 1334(c)(2) is not available for proceedings "arising in a case under title 11."²²

The only possible abstention in this case is therefore permissive abstention pursuant to 28

²⁰ 11 U.S.C.A. § 157(b)(2)(B).

²¹ 1 *Collier on Bankruptcy* ¶ 3.01[4][c][iv] (Allen N. Resnick & Henry J. Sommer eds.-in-chief, 15th ed. rev. 2004).

²² See *Energy Income Fund, L.P. v. Jerry Estes (In re Magnolia Gas Company, L.L.C.)*, 33 Fed. Appx. 418, 2002 WL 497417 (10th Cir. 2002) (noting that subsection (2) provides for mandatory abstention in non-core, "related to" cases).

U.S.C.A. § 1334(c)(1). It grants bankruptcy courts the power to abstain, but does not require abstention under any circumstance. It is to be used in those circumstances where "the interests of the estate and the parties will best be served" by the court's decision to submit to the state courts "unsettled questions of state property law arising in the course of bankruptcy administration."²³ A commentator has identified the following factors as often applied when determining permissive abstention:

1. the effect or lack of effect on the efficient administration of the estate if a court abstains;
2. the extent to which state law issues predominate over bankruptcy issues;
3. the difficulty or unsettled nature of the applicable state law;
4. the presence of a related proceeding commenced in the state court or other bankruptcy court;
5. the jurisdictional basis, other than 28 USC § 1334;
6. the degree of relatedness or remoteness of the proceeding to the bankruptcy case;
7. the substance rather than form of an asserted "core" proceeding;
8. the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the Bankruptcy Court;
9. the burden on the Bankruptcy Court's docket;
10. the likelihood that the commencement of the proceeding in Bankruptcy Court involves forum shopping by one of the parties;
11. the existence of a right to a jury trial;
12. the presence in the proceeding of nondebtor parties; and
13. any unusual or other significant factors.²⁴

²³ *Thompson v. Magnolia Petroleum*, 309 U.S. 478, 483 (1940).

²⁴ 1 *Norton Bankruptcy Law and Practice 2d* § 8:6 (Norton, auth & ed-in-chief 2004).

"The primary concern should be whether the federal bankruptcy objectives will be properly served if the Bankruptcy Court would cede jurisdiction to state court, or whether the duplication of effort and delay may be a consequence of abstention.¹²⁵ "Although this permissive abstention applies both to core and noncore matters, it is unusual in core proceedings for the court to exercise permissive abstention."¹²⁶

The existence of conditions where permissive abstention is possible can not constitute cause for relief as a matter of law. Such a rule would in effect convert permissive abstention into mandatory abstention. Permissive abstention can constitute cause for relief from stay only if the Court holds that it will abstain from hearing the issues pending before the Bankruptcy Court that are also before the state court.

For reasons similar to those which establish the absence of cause for relief from stay, the Court holds that the conditions for permissive abstention are not present. Determination of the amount of Block's claim is a core proceeding which is central to administration of the bankruptcy estate. Abstention would have adverse impact upon the efficient administration of this bankruptcy proceeding, even if the enforcement of a judgment, if any, were left to the Bankruptcy Court. Although state law issues predominate in determining the amount of claim, the issues are not difficult or unsettled. The Court does not find that determination of the issues would unduly burden its docket. Although the Debtors admittedly filed for bankruptcy relief in part to relieve themselves of continuing the Litigation in state court, their motivation arose from the burden of attorneys fees and litigation costs, not a desire to be in a

²⁵ *Id.*

²⁶ *Id.*

different forum. It is true that Blocks' loss of a right to jury would support abstention, but the Court finds that this detriment to Block is outweighed by other factors mitigating against abstention. As with relief from stay, Block has provided no authority that the loss of the right a jury trial in bankruptcy court should be a determining factor, and the Court's research has not located such case law.²⁷ The loss of the right to a jury is only one factor in the list of factors quoted above. The detriment to the Debtors of abstaining would greatly outweigh the benefit to Block. Given the history of the Litigation in state court, the Court further finds that abstention would likely result in delay of this proceeding to the detriment of all other parties in interest.

For the foregoing reasons, the Court holds that the availability of permissive abstention following Block's filing of the proof of claim does not change the Court's conclusion that Block has failed to establish cause for relief from stay. Further, to the extent that there may be an informal motion to abstain before the Court, it is denied.

CONCLUSION.

For the foregoing reasons, the Court denies the motion of Block for relief from stay to allow Block to proceed with the Litigation against the Debtors pending the Sedgwick County District Court.

²⁷ By filing a proof of claim, Block submitted itself to the process of allowance and disallowance of claims, thereby submitting itself to the equitable powers of the Bankruptcy Court. *Langenkamp v. Culp*, 498 U.S. 42, 43-44 (1990). Block's attempt in its proof of claim to revoke this waiver of the right to jury trial and to preserve the right to jury trial is ineffective. *Travellers International Ag. v. Robinson*, 982 F.2d 96, 100 (3rd Cir. 1992) (holding that a claim denominated as contingent and protective nevertheless constituted a waiver of the right to jury trial); *In re Peachtree Lane Associates, Limited*, 150 F.3d 788, 797-99 (7th Cir. 1998) (holding that a "conditional" designation attached to a counterclaim filed in bankruptcy court attempting to preserve the right jury trial was of "no moment").

Cause to grant relief from stay within the meaning of subsection 362(d) is not present. In addition, to the extent that the issue of permissive abstention is before the Court, the Court holds that it will not abstain from hearing the state law issues arising from Block's filing of its proof of claim.

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